UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

and **Case 28-CA-145221**

SARA PARRISH, an Individual

***Alexander J. Gancayco, Esq.,* for the General Counsel.**
***E. Michael Rossman, Esq,* for the Respondent.**

DECISION

MARY MILLER CRACRAFT, Administrative Law Judge. This case was submitted pursuant to the parties' joint motion and stipulation of facts, accepted and approved on August 4, 2015.[1] The complaint, as amended, alleges that Cellco Partnership d/b/a Verizon Wireless (Respondent or Verizon Wireless) violated Section 8(a)(1)[2] of the National Labor Relations Act (the Act) by maintaining certain handbook rules which interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7[3] of the Act.

On the entire record and after considering the briefs filed by counsel for the General Counsel and counsel for Respondent, the following findings of fact and conclusions of law are made.

I. JURISDICTION

Respondent is a Delaware general partnership with a principal office and place of business located in Basking Ridge, New Jersey. It has offices and places of business throughout

[1] Charging Party Sarah Parrish filed the underlying unfair labor practice charge on January 28, 2015. Complaint issued on April 30, 2015.

[2] Sec. 8(a)(1) of the Act, 29 U.S.C. §158(a)(1), provides, "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 of the Act."

[3] Sec. 7 of the Act, 29 U.S.C. §157, provides inter alia that, "Employees shall have the right to self-organization . . . and to engage in other concerted activities for the purposes of . . . mutual aid or protection. . . ."

the United States where it is engaged in the business of providing wireless telecommunications services throughout the United States including an office and place of business located in Chandler, Arizona. The parties stipulate that Respondent is engaged in interstate commerce pursuant to the Board's retail jurisdictional standard. Thus, the parties further stipulate and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Thus, this dispute affects commerce and the Board has jurisdiction of this case pursuant to Section 10(a) of the Act

II. UNLAWFUL RULES ALLEGATIONS

A. Facts in General

Respondent promulgated its 2014 Code of Conduct prior to August 2014. Until April 29, 2015, Respondent maintained the 2014 Code of Conduct at all of its offices throughout the United States. On or about April 29, 2015, Respondent promulgated the 2015 Code of Conduct. Since that time, Respondent has maintained the 2015 Code of Conduct at most of its other offices and places of business throughout the United States. At a handful of Respondent's facilities, the 2014 Code of Conduct remains in place.

Four of the five rules at issue in this proceeding were maintained in identical wording in the 2014 Code of Conduct and the 2015 Code of Conduct. Thus, the 2015 Code of Conduct retains without change the prior 2014 Code of Conduct provisions Section 1.6 Solicitation and Fundraising, Section 2.1.3 Activities Outside of Verizon Wireless, Section 3.3 Proper Use of Verizon Wireless' Property and Property Owned by Others, and Section 3.4.1 Prohibited Activities. However, a fifth rule, Section 1.8 Employee Privacy, was altered in the 2015 Code of Conduct. Both the 2014 and the 2015 versions of the Employee Privacy provisions are alleged to be unlawful.

B. Standard of Review in General

By its literal terms, Section 7 provides employees with "the right to self-organization" and the right to act together for their "mutual aid or protection." These words have been interpreted to protect employees right to communicate with each other regarding their workplace terms and conditions of employment.[4] Thus, the guarantee of Section 7 rights includes not only the right of employees to discuss organization but also the right to discuss wages, hours, and terms and conditions of employment.[5]

If a work rule would reasonably tend to chill employees in the exercise of their Section 7 rights, it will violate Section 8(a)(1) of the Act. *Hyundai America Shipping Agency,* 357 NLRB No. 80, slip op. at 2 (2011); *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). A violation may occur merely by maintenance of such a rule -- even in the absence of enforcement. *Lafayette Park Hotel,* supra; see also, *Cintas Corp*., 344 NLRB 943 (2005), enfd.482 F.3d 463 (D.C. Cir. 2007).

[4] *Parexel International, LLC,* 356 NLRB No. 82, slip op. at 3 (2011), citing *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995), enfd. in part 81 F.3d 209 (D.C. Cir. 1996) (discussions regarding wages, the core of Section 7 rights, are the grist on which concerted activity feeds).

[5] *Central Hardware Co. v. NLRB,* 407 U.S. 539, 542, 543 (1972).

A rule which explicitly restricts Section 7 rights is unlawful. *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). In the absence of explicit restriction, a violation will nevertheless be found if (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict Section 7 rights. Id. at 646-647. There is no allegation that any of these rules were promulgated in response to union activity or to restrict Section 7 rights. Thus, the sole inquiry here is whether employees would reasonably construe the language to prohibit Section 7 activity. In determining whether a challenged rule is unlawful, the rule must be given a reasonable reading and particular phrases may not be read in isolation. *Lafayette Park,* supra, 326 NLRB at 825, 827. In other words, there is no presumption of improper interference with employee rights. Id.

C. 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising

> Solicitation and fundraising distract from work time productivity, may be perceived as coercive and may be unlawful.
>
> Solicitation during work time (defined as the work time of either the employee making or receiving the solicitation), the distribution of non-business literature in work areas at any time or the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute, is prohibited. Non-employees may not engaged in solicitation or distribution of literature on company premises. The only exception to this policy is where the company has authorized communications relating to benefits or services made available to employees by the company, company-sponsored charitable organizations or other company-sponsored events or activities. To determine whether a particular activity is authorized by the company, contact the VZ Compliance Guideline.[6]

In *Purple Communications, Inc.,* 361 NLRB No. 126, slip op. at 1 (2014), the Board held that "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email." Thus, the Board overruled *Register Guard,*[7] which held employees have no right to use their employer's email system for Section 7 purposes, as "clearly incorrect" because it focused too much on employer property rights and "too little on the importance of email as a means of

[6] The Compliance Guideline is referred to in the Code of Conduct as an 800 number to call to report anonymous or confidential complaints or inquiries; reports of discrimination or harassment; questions or concerns about financial statements, reporting, accounting, internal accounting controls or auditing; claims of harassment; workplace safety and environment concerns; arrest for a felony or crime of dishonesty, assault or battery, drug-related or alcohol-related offense; potential conflicts of interest; request for approval of outside employment; misleading, erroneous, or falsified financial records; improper disclosure of nonpublic information; wage claims; unauthorized disclosure of customer information; to seek approval of a gift worth more than $100, entertainment worth more than $200, or a gift of travel; and for certain issues regarding export and foreign transactions. An Office of Integrity and Compliance is referred to in the introduction of the Code of Conduct. Use of the Compliance Guideline is suggested if a supervisor refuses to modify a request that an employee violate the Code.

[7] 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).

workplace communications." Id. The parties stipulated that Respondent customarily communicates with its employees by email and through an intranet system.

Respondent's rule specifically prohibits use of company resources (emails, fax machines, computers, telephones, etc.) to solicit or distribute at any time. This rule is contrary to the *Purple Communications* presumption that employees have a right to use Respondent's email system to engage in Section 7 communications during their nonworking time.[8] No special circumstances are present nor does Respondent argue that special circumstances justify a restriction in order to maintain production and discipline.

Respondent's rule prohibits both solicitation and distribution. In *Purple Communications,* the Board explained that email "is fundamentally a forum for communication."[9] The Board found it inappropriate to treat email as "solicitation" or "distribution" per se,[10] recognizing that as a forum of communication it constituted solicitation, literature or information, distribution or merely communication that is none of those but nevertheless constitutes protected, concerted activity.[11] Thus both the prohibition on solicitation as well as the prohibition of distribution contravene the holding of *Purple Communications.*

Accordingly, I find that since August 2014, Respondent has violated Section 8(a)(1) of the Act by maintenance its 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising policy that prohibits employees' use of its email system to engage in solicitation or distribution including Section 7-protected communications during nonworking time.

D. 2014 Code of Conduct Section 1.8 Employee Privacy

Since at least August 2014, the Employee Privacy Code of Conduct has provided:

> Verizon Wireless acquires and retains personal information about its employees in the normal course of operations, such as for employee identification purposes and provision of employee benefits. You must take appropriate steps to protect all personal employee information, including social security numbers, identification numbers, passwords, financial information and residential telephone numbers and addresses.
>
> You should never access, obtain or disclose another employee's personal information to persons inside or outside of Verizon Wireless unless you are acting for legitimate business purposes and in accordance with applicable laws, legal process and company policies, including obtaining any approvals necessary under these policies.

[8] In a pre-*Purple Communications* decision, Administrative Law Judge William Nelson Cates analyzed an identical rule and found that it did not violate the Act. See *Verizon Wireless,* JD(ATL)-24-14 (July 25, 2014), pending on exceptions before the Board.

[9] *Purple Communications,* supra, slip op. at 11.

[10] *Purple Communications,* supra, slip op. at 12.

[11] *Purple Communications,* supra, slip op. at 12-13.

Relying on *Cintas Corp v. NLRB.,* 482 F.3d 463, 468-469 (D.C. Cir. 2007) and *Fresh & Easy Neighborhood Market,* 361 NLRB No. 8, slip op. at 2-3 (2014), the General Counsel contends that this rule interferes with employees' right to communicate about their terms and conditions of employment and would be reasonably understood to prohibit employees from disclosing employee personal information as part of union organizing or for other protected, concerted activities. Respondent, on the other hand, argues that the rule is lawful. Noting that it extends to "financial information and residential telephone numbers and addresses," Respondent argues that this prohibition was limited only to information that it acquired and retained in the normal course of operations. Thus, Respondent claims it may protect the information it has obtained and retained in its own files.

Employers have a substantial and legitimate interest in maintaining the privacy of certain business information. *Super K-Mart,* 330 NLRB 263 (1999); *Lafayette Park Hotel,* 326 NLRB 824, 826 (1998), enfd 203 F3d 52 (D.C. Cir. 1992). Thus, prohibitions on disclosing confidential information are lawful if, viewed in context, employees would not reasonably understand that Section 7-related activity was proscribed by the rule. *Super K-Mart,* supra, (rule would be understood to protect employer's legitimate interest in confidentiality of its private information such as guest information, trade secrets, and contracts with suppliers); *Lafayette Park Hotel,* supra (rule prohibiting disclosure of hotel-private information would not be reasonably understood to proscribe Section 7-related activity).

The 2014 Code of Conduct Employee Privacy rule is broadly worded and, in my view, would be reasonably read to prohibit employees from discussing wages, hours, and terms and conditions of employment or disclosing employee information to a labor organization or for other protected, concerted activity. Similar rules have been held unlawful. For instance, in *MCPc, Inc.,* 360 NLRB No. 39, slip op. 1 (2014), the Board found a rule prohibiting distribution of personal or financial information, etc., would reasonably be construed to prohibit discussion of wages or other terms and conditions of employment with coworkers—activity protected by Section 7 of the Act.[12]

Further, I take administrative notice that in a prior case involving the same rule, the administrative law judge found a violation.[13] Thus I find that since August 2014 until April 29, 2015 at all but a handful of facilities, Respondent violated Section 8(a)(1) of the Act by maintaining the 2014 Code of Conduct Section 1.8 Employee Privacy. At the handful of facilities where the 2014 Code of Conduct Section 1.8 Employee Privacy is still in effect, the violation continues to date.

[12] See also, *Hyundai*, supra, 357 NLRB No.80, slip op. at 12 (prohibition of disclosure of any information exchanged on company email, instant messages, and phone systems would reasonably include wage and salary information, disciplinary actions, performance evaluations and other information of common concern to employees); and *Cintas Corp*., 344 NLRB 943, 943 (2005), enfd. in relevant part 482 F.3d 463 (D.C. Cir. 2007) (rule's unqualified prohibition of the release of "any information" regarding "its partners" could be reasonably construed by employees to restrict discussion of wages and other terms and conditions of employment).

[13] *Verizon Wireless,* JD(ATL)-24-14 (July 25, 2014), Administrative Law Judge William Nelson Cates, JD 9:33-10:43, pending on exceptions to the Board.

E. 2015 Code of Conduct Section 1.8 Employee Privacy

Since April 29, 2015, Respondent has maintained the following employee privacy rule:

> You must take appropriate steps to protect confidential personal employee information, including social security numbers, identification numbers, passwords, bank account information and medical information. You should never access or obtain, and may not disclose outside of Verizon, another employee's personal information obtained from Verizon business records or systems unless you are acting for legitimate business purposes and in accordance with applicable laws, legal process and company policies, including obtaining any approvals necessary under those policies.

The General Counsel alleges that this rule is overbroad because it would be reasonably understood to require employees to protect personal employee information noting there is no limitation to make it clear that the rule does not restrict information implicating Section 7 concerns. Thus, the General Counsel argues, an employee would not understand whether terms and conditions of employment were encompassed within the rule. Further, the General Counsel contends that the restriction on disclosure of "personal information obtained from Verizon business records" is overly broad because it would reasonably be read to bar employees from obtaining time card or schedule information, disciplinary information, and personnel records in furtherance of an organizing campaign or other concerted activity.

Respondent argues that the 2015 rule is clearly aimed at preserving the confidentiality of social security numbers, identification numbers, passwords, bank account information and medical information. Relying on *Super K-Mart,* supra, Respondent asserts that employees would readily understand that the rule was designed to protect the legitimate employer interest in confidentiality of private information. Further Respondent notes that the rule does not prohibit employees from discussing wages or working conditions. Thus, Respondent claims that when read in context, it is clear that the scope of the rule is narrow: social security numbers, identification numbers, passwords, bank account information and medical information. Thus, Respondent concludes that it would be unreasonable to extend the scope of the rule.

In *Super K-Mart,* supra, the employer's rule provided, "Company business and documents are confidential. Disclosure of such information is prohibited." In *Lafayette Park,* supra, the employer's rule precluded, "Divulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information." In both instances, the Board noted that the rules did not explicitly preclude discussion of wages or working conditions. Thus, the Board held that those rules were lawfully addressed to protecting the employers' legitimate business interest and did not implicate employees' Section 7 rights.

Similarly, I am convinced that when read in context, Respondent's 2015 Code of Conduct Section 1.8 Employee Privacy would not be understood to implicate employees' Section 7 rights. The rule has two sentences. In the first sentence, the phrase "confidential personal employee information" specifically includes "social security number, identification numbers, passwords, bank account information and medical information." This information is legitimately protected confidential information. Possible ambiguity might have resulted if the

first sentence of the rule specifically recited typical expansive language such as "including but not limited to." But here the first sentence uses the term "including." A literal reading of the second sentence might fault it for changing the first sentence's term "confidential personal employee information" to "employee's personal information." Redundancy of the first sentence term in the second sentence would have provided a positive indication that the second sentence referred to the same phrase and the same specific information used in the first sentence. However, a reasonable reading of the first and second sentences in context indicates that the same information is referenced in both sentences. That is, reasonable reading of the second sentence in context is that employees should never access, obtain, or disclose another employee's social security number, identification number, password, bank account information, or medical information unless acting for legitimate business purposes. Thus I find that Respondent's 2015 Code of Conduct Section 1.8 Employee Privacy does not tend to chill Section 7 activity and does not violate Section 8(a)(1).

F. 2014 and 2015 Code of Conduct Section 2.1.3 Activities Outside of Verizon Wireless

Section 2 of the Code of Conduct (2014 and 2015) is entitled "Maintaining Integrity and Fairness in the Workplace. Section 2.1 "Avoiding Conflicts of Interest" states "You must disclose any potential or actual conflict to the Compliance Guideline. This chapter addresses some of the most common conflicts." A series of questions and answers is set forth in the left margin of the section. One such question is "I need to make extra money and I want to get a second job. Is this a problem?" The answer: "This may create a conflict of interest if your second job provides any of the same types of services or products as Verizon Wireless, compromises Verizon Wireless' interests or adversely affects your job performance."

Section 2.1.1 sets forth personal conflicts of interest while Section 2.1.2 sets forth conflicts which might arise from employment outside of Verizon Wireless. Section 2.1.3 (the first paragraph of this section is at issue here) is entitled "Activities Outside of Verizon Wireless." The Code continues with Section 2.2 regarding political conflicts of interest, Section 2.2.1 regarding personal political interests, Section 2.2.2 dealing with contributions of corporate assets, and Section 2.2.3 regarding seeking public office. Section 2.3 deals with insider trading.

Situated midway in Section 2, the first paragraph of Section 2.1.3 provides,

> Many employees participate in an individual capacity in outside organizations (such as their local school board or homeowners' association). Memberships in these associations can cause conflicts if they require decisions regarding Verizon Wireless or its products. If you are a member of an outside organization, you must remove yourself from discussing or voting on any matter that involves the interests of Verizon Wireless or its competitors. You must also disclose this conflict to your outside organization without disclosing non-public company information and you must disclose any such potential conflict to the VZ Compliance Guideline. Participation in any outside organization should not interfere with your work for Verizon Wireless. To the extent that your participation infringes on company time or involves the use of Verizon Wireless resources, your supervisor's approval is required.

The General Counsel argues that this rule is impermissibly overbroad because it can reasonably be read to indicate that a conflict of interest is created by engaging in Section 7 activities. Second, the General Counsel asserts that the ban on disclosing non-public information is overly broad. Finally, the General Counsel contends that rules requiring employees to disclose their protected activities to their employer are unlawful.

Respondent contends that the clause is lawful and notes that contextually it is in the Code of Conduct section on "Maintaining Integrity and Fairness in the Workplace." Other rules in this section deal with supervision of an employee with whom the supervisor shares a close personal friendship; maintaining separate employment with a vendor, supplier, contractor, subcontractor or competitor; violating campaign finance laws; insider trading; and transacting business in securities or derivatives of a company with which one conducts or supervises business on Verizon's behalf. Thus, Respondent asserts that in context employees would construe Section 2.1.3 as related to potential negative impact on business judgments due to outside activities. Further context is provided in Code Section 2.3.1 which deals with legal and ethical conflicts and details the types of "outside organizations" listed civic groups such as local school boards, homeowners associations and public and non-public corporations. Based on this contextual setting, Respondent asserts that no reasonable reading would include union membership or any other Section 7 activity was prohibited. Respondent cites *Copper River of Boiling Springs, LLC,* 360 NLRB No. 60, slip op. at 13 (2014) (statement of purpose of rule as a whole suggests contours of its application).

Read literally and in context, the rule does not tend to chill Section 7 activities. First, the literal language of the rule clearly indicates that the conflict of interest addressed is in making decisions about Verizon Wireless or its products as a member of an outside organization while being employed by Verizon Wireless. Thus, the language is clearly addressed to the ethics of a business decision. Second, the context of the rule clearly indicates that the conflicts of interest it addresses are those created by or related to commercial competition. The rule is not linked to other rules prohibiting participation in outside activities that are detrimental to the employer's image or reputation.

Thus, the rules held to be overly broad in *The Sheraton Anchorage,* 362 NLRB No. 123, slip op. at 1 fn.4 (2015) and *First Transit, Inc.,* 360 NLRB No. 72, slip op. at 2, fn.5 (2014) are distinguishable by their context and the overall circumstances. In *The Sheraton Anchorage,* supra, the rule, "I understand that conflict of interest with the hotel or company is not permitted," was applied to discharge employees engaged in Section 7 activity. The Board found it was overbroad particularly when considered with other overly broad rules prohibiting participation in outside activities that are detrimental to the company's image or reputation.

Similarly, in *First Transit,* supra, the "disloyalty" rule was situated with other rules regarding making false, vicious, or malicious statements concerning the company or coworkers and conduct during non-working hours detrimental to the interest or reputation of the company. 360 NLRB No. 72, slip op. at 11. The Board noted that the rule was overly broad and did not focus on "uncooperative, improper, unlawful or otherwise unprotected employee misconduct" which would be understood not to include protected activity. Id, slip op. at 2, fn. 5.

Thus in both *The Sheraton Anchorage* and *First Transit,* the focus of the rules was on stand-alone misbehavior rather than, as here: supervising those with whom one has a close personal relationship (2.1.1 Personal Conflicts of Interest), second jobs (Section 2.1.2 Employment Outside Verizon Wireless), political contributions and activities (Section 2.2 Personal Political Interests), or insider trading (Section 2.3 Insider Trading and Financial Interests).

In this respect, Section 2.1.3 is somewhat similar to the rule examined in *Tradesmen International,* 338 NLRB 460, 460-461 (2002). That rule prohibited employees from engaging in any activity that conflicted with or appeared to conflict with the interests of the company, prohibited any illegal restraints of trade, and required employees to avoid conflicts of interest and to refer questions and concerns about potential conflicts to the employer. The Board held that employees would not reasonably fear that they would be punished for engaging in Section 7 activities based on the language and context of the rule. Cf., *Rio All-Suites Hotel & Casino,* 362 NLRB No. 190, slip op. at 1 (2015) ("extraordinarily broad" confidentiality rule prohibiting sharing any information about the employer which has not already been shared with the public clearly implicated terms and conditions of employment); *Hills & Dales General Hospital,* 360 NLRB No. 70, slip op. at 2 (2014) (distinguishing *Tradesmen International* which did not include closely related unlawful provisions).

The General Counsel also takes issue with Section 2.1.3's ban on disclosing non-public company information. The relevant text:

> If you are a member of an outside organization, you must [appropriately recuse yourself]. You must also disclose this conflict to your outside organization without disclosing nonpublic company information and you must disclose any such potential conflict to the Compliance Guideline.

According to the General Counsel, this language leaves employees with the impression that they cannot disclose non-public information about Respondent, their coworkers, or their terms and conditions of employment as part of an organizing campaign or for other protected, concerted activity. The General Counsel asserts that rules broadly prohibiting disclosure of non-public information are overly broad. relying on *Rio All-Suites Hotel & Casino,* 362 NLRB No. 190, slip op. at 2-3 ("extraordinarily broad" confidentiality rule precluding sharing, among other things, salary structures clearly implicates terms and conditions of employment); and *Flamingo Hilton-Laughlin,* 330 NLRB 287, 288 fn.3, 291-292 (1999) (code of conduct prohibiting employees from revealing confidential information about customers, hotel business, or fellow employees violates Sec. 8(a)(1)).

When read in context, the requirement in Section 2.1.3 that an employee who is a member of an outside organization must disclose to the outside organization his or her employment with Verizon Wireless without disclosing nonpublic information must be construed as a part of the business ethics policy. After all, the rule has nothing to do with membership in a labor organization and it strains logic to read the rule as requiring that an employee who joins a labor organization is constrained to reveal that he or she is employed with Verizon Wireless. The requirement that employment be revealed without disclosing nonpublic information is clearly linked to discussing or voting on a matter related to Verizon Wireless or its products. The

preclusion on disclosing nonpublic information must be construed and understood in this context. And so observed, the prohibition is not remotely linked to discussing wages, hours, or terms and conditions with a labor organization or to further protected, concerted activity.

Similarly, the General Counsel's argument that the reporting requirement to Compliance Guideline is unlawful must be rejected. The General Counsel cites *Ivy Steel & Wire, Inc.,* 346 NLRB 404, 442 (2006); *Saginaw Control & Engineering, Inc.,* 339 NLRB 541, 552 (2003); and *TeleTech Holdings, Inc.,* 333 NLRB 402, 403 (2001). Certainly, as is noted in these cases, rules requiring that employees disclose their protected activities to their employer are unlawful. However, a clear, contextual reading of Section 2.1.3 reveals that it contains no such requirement. A reasonable reading of the rule would not encompass a requirement that protected activity be reported. The rule requires that when an employee's activity in an outside organization requires a vote on whether or not to purchase Verizon Wireless products, the employee must announce the conflict of interest between his/her employment and casting a vote on the issue and then report this conflict of interest to Compliance Guideline.[14]

Thus, I find that Section 2.1.3 does not chill Section 7 activity as it is not overly broad and would not be reasonably read to preclude Section 7 activities. I find that the prohibition on disclosure of nonpublic company information does not relate to wages, hours, or terms and conditions of employment and thus does not infringe Section 7 activity. I further find that Section 2.1.3 does not require reporting protected activity to Respondent.

G. 2014 and 2015 Code of Conduct Section 3.3 Proper Use of Verizon Wireless' Property and Property Owned by Others

> Unless permitted by written company policy, it is never appropriate to use Verizon Wireless machinery, switching equipment or vehicles for personal purposes, or any device or system to obtain unauthorized free or discount services.

The General Counsel contends that this rule runs afoul of *Purple Communication,* supra, in that prohibiting use of employer machinery for personal use must include the employer email system for Section 7-related purposes on non-work time. Respondent claims that the rule prohibits employees from manipulating the network to steal wireless service and, more generally, prohibits misappropriating switching equipment, machinery, and infrastructure. Respondent avers that the rule is lawful because it applies to company property which employees do not have a right to use for reasons not related to work. Respondent does not address the General Counsel's concern about "machinery" being susceptible of meaning email systems.

Section 3 of the Code, Protecting Verizon Wireless' Assets and Reputation, contains provisions for accurate record keeping; promotion of transparent and complete disclosure; retaining company records; safeguarding company information; protecting

[14] The General Counsel also argues that Section 2.1.3 infringes on employee use of email on nonworking time. Further elucidation was not set out. This argument is rejected as without basis.

non-public company information; company benefits, property and funds; work time; protecting company communications and information systems; prohibited activities; security of facilities, intellectual property, and handling external communications.

Section 3.3 indicates that company switching equipment, vehicles, and "machinery" cannot be used for personal purposes. In the context of switching equipment and vehicles, it is not reasonable to assume that machinery includes email systems. This is especially true when Section 3.4.1 specifically deals with use of email systems. Thus, I find that Section 3.3 does not tend to chill Section 7 activity because it cannot be reasonably read to prohibit use of email systems.

H. 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities

> You may never use company systems (such as e-mail, instant messaging, the Intranet or Internet) to engage in activities that are unlawful, violate company policies or result in Verizon Wireless' liability or embarrassment. Some examples of inappropriate uses of the Internet and e-mail include: Pornographic, obscene, offensive, harassing or discriminatory content; Chain letters, pyramid schemes or unauthorized mass distributions; Communications primarily directed to a group of employees inside the company on behalf of an outside organization.

As previously discussed, in *Purple Communications, Inc.,* supra, the Board held that "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email." The parties stipulated that Respondent customarily communicates with its employees by email and through an intranet system. A reasonable reading of Section 3.4.1 is that employees will be disciplined for using company email to communicate with a group of employees inside the company on behalf of a labor organization or employees engaged in protected, concerted activity if such use will result in Verizon's "embarrassment." Not only does such language contravene *Purple Communications,* it is also overly broad in the use of embarrassment as a cause of discipline in use of email, instant messaging, intranet or internet.[15] Thus, on its face, this language chills Section 7 activity and violates Section 8(a)(1) of the Act.

I. 2014 and 2015 Code of Conduct: Conclusion:

Two portions of the Code of Conduct Conclusion are alleged to be overly broad. The entire Conclusion is set forth below. The two portions alleged to be overly broad are underlined.

[15] See cases cited by the General Counsel including *The Sheraton Anchorage,* supra, 362 NLRB No. 123, slip op. at 1 (rule prohibiting behavior that publicly embarrasses employer unlawful); *Triple Play Sports Bar& Grille,* 361 NLRB No. 31 (2014) (rule prohibiting inappropriate discussion on social media overly broad). Judge Cates examined a portion of this rule and found it lawful under pre-*Purple Communications* authority. *Verizon Wireless,* JD(ATL)-24-14 (July 25, 2014), Administrative Law Judge William Nelson Cates, JD 13:2-36, pending on exceptions to the Board.

CONCLUSION

It is not possible to describe all unethical or illegal business practices in detail. The best guidelines are individual conscience, common sense and unwavering compliance with all company policies, applicable laws, regulations and contractual obligations. Seek guidance if you are unsure of what to do, ask questions and report wrongdoing. Company policy strictly forbids any retaliation against an employee who reports suspected wrongdoing.

Violations of the law, the Code and other company policies, procedures, instructions, practices and the like can lead to disciplinary action up to and including termination of employment. Such disciplinary action may also be taken against supervisors or executives who condone, permit or have knowledge of improper conduct or fail to take action to prevent and detect violations, such as failure to provide training and failure to supervise subordinates' work. No one may justify an illegal or improper act by claiming it was ordered by someone in higher management. The following are examples of action considered illegal or unacceptable.

- Theft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary);
- Working under the influence of alcohol or illegal substances or abusing legal substances;
- Improperly operating a vehicle for company business, or driving while on company business with a suspended or revoked license, or while under the influence of drugs or alcohol;
- Using any program or promotion in an unauthorized manner;
- Engaging in any form of workplace violence, including, but not limited to, any act of physical intimidation or assault, including threats of violence;
- Soliciting or giving the impression that you would expect gifts or gratuities from suppliers or customers;
- Disparaging or misrepresenting the company's products or services or its employees;
- Falsifying a company record such as a time report; and
- Misrepresenting your health status or other reasons for absence, such as misrepresenting yourself as disabled and receiving disability benefits.

The General Counsel alleges the two underlined portions of the Conclusion are overly broad because they would reasonably be understood to prohibit Section 7 communications. Regarding unauthorized disclosure of employee information, the General Counsel contends the language would reasonably be understood to preclude discussion of wages, hours, and terms and conditions of employment relying on *Fresh & Easy Neighborhood Market,* supra, 361 NLRB No. 8, slip op. at 2-3 (employees would reasonably construe admonition to keep employee information secure to prohibit discussion and disclosure of information about other employees, such as wages and terms and conditions of employment), among other cases. Regarding

disparaging company products, services, or employees, the General Counsel asserts the rule is overbroad relying on *Lily Transp. Corp.,* 362 NLRB No. 54 (2015) (rule prohibiting posting of "disparaging, negative, false, or misleading information or comments" about the employer or its employees unlawful) and other similar cases.

Respondent argues that each of the bulleted items, read in context, is informed by confidentiality rules contained elsewhere in the Code and that these items should not be construed in isolation. Respondent, citing *NLRB v. Eletrical Workers Local 1229,* 346 U.S. 464, 475-477 (1953), asserts that the Act does not preclude rules prohibiting disparagement of products and services. Respondent claims that a reasonable employee reading the disparagement language would understand it to apply to products and services and the term "employees" in the context of products and services interactions and would also be understood contextually to relate to unlawful discrimination.

In agreement with the General Counsel, the underlined portions of the Conclusion are overly broad. When read in context, the rule prohibiting "disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)" would reasonably be understood to preclude discussion of wages, hours, and terms and conditions of employment. Similarly, the rule prohibiting "disparaging or misrepresenting the company's products or services or its employees" is too broad and would reasonably be read to mean that employees could not speak to their coworkers and voice criticism of managers. Thus, it tends to chill legitimate Section 7 activity and violates Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Since August 2014, by maintenance of its 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising rule which prohibits employees' use of its email system to engage in solicitation or distribution including Section 7-protected communications during nonworking time, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
2. Since August 2014 until April 29, 2015, and at a handful of locations continuing to date, by maintenance of its 2014 Code of Conduct Section 1.8 Employee Privacy which would be reasonably read to prohibit employee discussion of wages, hours, and terms and conditions of employment, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
3. Respondent's 2015 Code of Conduct Section 1.8 Employee Privacy in effect since April 29, 2015 at all but a handful of locations does not tend to chill employees in the exercise of their Section 7 rights because employees would not reasonably construe the language to prohibit Section 7 activity.
4. Respondent's 2014 and 2015 Code of Conduct Section 2.1.3 Activities Outside of Verizon Wireless in effect since August 2014 and April 29, 2015, respectively, does not tend to chill employees in the exercise of their Section 7 rights because employees would not reasonably construe the language to prohibit Section 7 activity.
5. Respondent's 2014 and 2015 Code of Conduct Section 3.3 Proper Use of Verizon

Wireless' Property and Property Owned by Others in effect since August 2014 and April 29, 2015, respectively, does not tend to chill Section 7 activity because it cannot be reasonably read to prohibit use of email systems.

6. Respondent's 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities in effect since August 2014 and April 29, 2015, respectively, contravenes *Purple Communications* and it is also overly broad in the use of "embarrassment" as a cause for discipline in use of email, instant messaging, intranet, and internet. Thus, on its face, this language chills Section 7 activity and violates Section 8(a)(1) of the Act

7. Respondent's 2014 and 2015 Code of Conduct Conclusion rule in effect since August 2014 and April 29, 2015, respectively, prohibiting "disclosure of company, customer or employee records, data, funds, property, or information (whether or not it is proprietary)" would reasonably be understood to preclude discussion of wages, hours, and terms and conditions of employment. Similarly, the rule prohibiting "disparaging or misrepresenting the company's products or services or its employees" is too broad and would reasonably be read to mean that employees could not speak to their coworkers and voice criticism of managers. Thus, these two items in the Conclusion violate Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondents shall further be ordered to refrain from in any like or related manner abridging any of the rights guaranteed to employees by Section 7 of the Act.

Within 14 days, at all of its facilities where the unlawful policies are or have been in effect,[16] Respondent shall rescind the portions of 2014 (where it is still in effect) and 2015 Code of Conduct Sections 1.6, 1.8, 3.4.1, and the Conclusion to the extent these sections have been found unlawful. See, e.g., *Guardsmark, LLC,* 344 NLRB 809, 812 (2005), and cases cited therein. Respondent may comply with the Order by rescinding the unlawful provisions and republishing its employee handbook without them. The Board recognizes, however, that republishing the handbook could entail significant costs. Accordingly, the Respondent may supply the employees either with handbook inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing which will cover the old and unlawfully broad rules, until it republishes the handbook without the unlawful provisions. Thereafter, any copies of the handbook that are printed with the unlawful rules must include the new inserts before being distributed to employees." *Guardsmark,* 344 NLRB at 812, fn. 8.

As part of the remedy in this case, Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted nationwide in all Respondents' facilities or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an

[16] See, e.g., *Albertson's, Inc.,* 300 NLRRB 1013, fn. 2 (1990), cited in *Guardsmark,* supra, 344 NLRB at 812 (where unlawful rule maintained as a companywide policy, generally employer must post appropriate notice at all facilities where policy has been or is in effect).

internet site, and/or other electronic means, if Respondent customarily communicate with their employees by such means. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed a facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 2014. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 28 of the Board what action they will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

Respondent, Cellco Partnership d/b/a Verizon Wireless, at all of its facilities nationwide, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a) Maintaining its 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising rule which prohibits employees' use of its email system to engage in solicitation or distribution including Section 7-protected communications during nonworking time.

b) Maintaining its 2014 Code of Conduct Section 1.8 Employee Privacy which would be reasonably read to prohibit employee discussion of wages, hours, and terms and conditions of employment.

c) Maintaining its 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities which contravenes *Purple Communications* and is also overly broad in the use of "embarrassment" as a cause for discipline in use of email, instant messaging, intranet, and internet.

d) Maintaining its 2014 and 2015 Code of Conduct Conclusion rule (1) prohibiting "disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)," which would reasonably be understood to preclude discussion of wages, hours, and terms and conditions of employment and (2) prohibiting comments which are "disparaging or misrepresenting the company's products or services or its employees" which would reasonably be read to mean that employees could not speak to their coworkers and voice criticism of managers.

e) In any like or related manner interfering with, coercing or restraining employees in the exercise of the exercise of the rights guaranteed them by Section 7 of the Act.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

a) Rescind the 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising that prohibits employees' use of Respondent's email system to engage in electronic solicitation or electronic distribution.

b) Rescind its 2014 Code of Conduct Section 1.8 Employee Privacy at the handful of locations where it is still in effect which would be reasonably read to prohibit employee discussion of wages, hours, and terms and conditions of employment.

c) Rescind the 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities to the extent it contravenes *Purple Communications* and is also overly broad in the use of "embarrassment" as a cause for discipline in use of email, instant messaging, intranet, and internet.

d) Rescind the 2014 and 2015 Code of Conduct Conclusion rule (1) prohibiting "disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)," which would reasonably be understood to preclude discussion of wages, hours, and terms and conditions of employment and (2) prohibiting comments which are "disparaging or misrepresenting the company's products or services or its employees" which would reasonably be read to mean that employees could not speak to their coworkers and voice criticism of managers.

e) Within 14 days after service by the Region, post at all of its facilities nationwide where the unlawful policies have been in effect or are currently in effect the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any of its facilities involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 2014.

f) Within 21 days after service by the Region, file with the Region Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. September 18, 2015

Mary Miller Cracraft
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain the 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising that prohibits employees' use of Verizon's email system to engage in electronic solicitation or electronic distribution.

At a handful of locations where the 2015 Code of Conduct is not yet in effect, WE WILL NOT maintain the 2014 Code of Conduct Section 1.8 Employee Privacy which would be reasonably read to prohibit employee discussion of wages, hours, and terms and conditions of employment.

WE WILL NOT maintain the 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities which does not allow employees to access the Verizon email system for Section 7-protected communications on nonworking time and is also overly broad in the use of "embarrassment" as a cause for discipline in use of email, instant messaging, intranet, and internet.

WE WILL NOT maintain the 2014 and 2015 Code of Conduct Conclusion rule (1) prohibiting "disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)," which would reasonably be understood to preclude you from discussing your wages, hours, and terms and conditions of employment and (2) prohibiting comments which are "disparaging or misrepresenting the company's products or services or its employees" which would reasonably be read to mean that you could not speak to your coworkers and voice criticism of managers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days rescind the 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising; where it is still in effect, WE WILL rescind 2014 Code of Conduct Section 1.8 Employee Privacy; WE WILL rescind the 2014 and 2015 Code of Conduct Section 3.4.1 Prohibited Activities; and WE WILL rescind the 2014 and 2015 Code of Conduct Conclusion rule (1) prohibiting "disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)," and (2) prohibiting comments which are "disparaging or misrepresenting the company's products or services or its employees."

WE WILL notify all employees at all of our facilities within the United States and its territories where the 2014 and 2015 Code of Conduct Section 1.6 Solicitation and Fundraising, were in existence, that such policies have been rescinded and will no longer be enforced.

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-145221 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.